

MAR 06 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EDWARD FONG,

Petitioner - Appellant,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent - Appellee.

No. 07-73625

Tax Ct. No. 18124-05L

MEMORANDUM *

Appeal from a Decision of the
United States Tax Court
L. Paige Marvel, Judge, Presiding

Submitted February 18, 2009 **

Before: BEEZER, FERNANDEZ, and W. FLETCHER, Circuit Judges.

Edward Fong appeals pro se from the tax court's order dismissing for lack of subject matter jurisdiction his action contesting an adverse decision letter issued

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

following his untimely request for a collection due process (“CDP”) hearing for tax year 2001. We have jurisdiction pursuant to 26 U.S.C. § 7482. We review de novo, *Gorospe v. Comm’r*, 451 F.3d 966, 968 (9th Cir. 2006), and we affirm.

The tax court properly determined that Fong was not entitled to a CDP hearing because he did not request the hearing within thirty days of the final notice of the government’s intent to levy. *See* 26 U.S.C. § 6320(a)(3)(B) (giving taxpayer a right to request a CDP hearing within thirty days of the levy notice). Contrary to Fong’s contentions, the Internal Revenue Service provided sufficient notice. *See* 26 U.S.C. § 6330(a)(2) (requiring that notice of intent to levy be sent by certified or registered mail, return receipt requested, to a person’s last known address).

Because Fong did not request a hearing within the statutory period, he was only entitled to an “equivalent hearing.” *See* 26 C.F.R. § 301.6330-1(I) (providing that “[a] taxpayer who fails to make a timely request for a CDP hearing is not entitled to a CDP hearing” but may nevertheless request an administrative “equivalent hearing”). The tax court properly determined that it lacked subject matter jurisdiction to review the Decision Letter issued following the equivalent hearing. *See* 26 U.S.C. § 6330(d)(2); 26 C.F.R. § 301.6330-1(i)(2)(A-I6) (“Section 6330 does not authorize a taxpayer to appeal the decision of Appeals with respect to an equivalent hearing.”).

Fong's remaining contentions are unpersuasive.

AFFIRMED.